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"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 282

DEPOSIT BEVERAGE CONTAINER RECYCLING

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-282-1 Purpose. The purpose of this chapter is to implement the deposit beverage container program, chapter 342G, part VIII, HRS, and to establish minimum standards to provide a mechanism for economical and environmentally sound collection of empty beverage containers, to foster systems of redemption which facilitate recycling of empty beverage containers, and to minimize costs without inconveniencing consumers.
[Eff] (Auth: HRS §342G-109) (Imp: HRS §342G-109)

§11-282-2 Applicability. These rules are applicable to all persons defined in this chapter who are subject to regulation under the deposit beverage container program, including, but not limited to, beverage manufacturers, distributors, recycling facilities, redemption centers, dealers and other businesses that sell deposit beverages in deposit beverage containers, unless specifically stated otherwise. [Eff] (Auth: HRS §342G-109) (Imp: HRS §342G-109)

§11-282-03 Definitions. The following definitions shall apply whenever the terms are used in this chapter:

"Applicant" means the person who has the authority to legally bind a redemption center to a contract.

"Cancel" means the act of removing the refund

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value of an empty deposit beverage container by any of the following actions:

- (1) Metal empty beverage containers shall be deemed cancelled when such containers can no longer be physically reconstituted or distinguished as individual containers;
- (2) Glass empty beverage containers shall be deemed canceled when such containers have been crushed; or
- (3) Plastic empty beverage containers shall be deemed canceled when the original form has been so altered as to make reconstitution physically impossible.

"Certification" means an official document issued by the department of health that identifies a redemption center as being certified by the department.

"Certified" means a redemption center that has met the minimum requirements established by the department as defined in section 11-282-42.

"Consumer" means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

"Director" means the director of health.

"Facility" means all contiguous land including buffer zones and structures, other appurtenances, and improvements on the land used for the handling of solid waste.

"High-density population area" means all United States Postal Service Zip Code areas on Oahu, which contain three or more dealers of five thousand or more square feet of interior space; or a resident population of 17,500 or greater.

"Manufactured" means the completely filled bottles, cans, or other deposit beverage containers, which are inventoried for sale or distribution.

"Manufacturer" means any person who bottles, cans, or otherwise fills deposit beverage containers for sale to distributors, dealers or consumers.

"Material" means the physical substance used to manufacture a deposit beverage container including, but not limited to, plastic, aluminum, metal, or glass.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Recycling facility" means all contiguous land and

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structures and other appurtenances, and improvements on the land used for collection, separation, recovery, and sale of reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of the manufacturing process aimed at producing a marketable product made of post consumer material.

"Redeem" means to return an empty deposit beverage container that is identified with the Hawaii refund value to a certified redemption center and receive refund value for the container.

"Redeemable beverage container" means a container identified with the Hawaii refund value that has not been cancelled by means described in this chapter.

"Refund value" means the amount of the deposit established under chapter 342G, part VIII, HRS.

"Rural area" means a non-high density population area.

"Segregated" means divided by material type and that such divided load consists of 100% Hawaii refund value material.

"Segregated rate" means a payment rate set by the department for loads of segregated deposit beverage containers assessed by weight.

§11-282-4 General requirements. (a) Penalties. Any person who violates any provision of these rules shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative, civil, or criminal actions.

(b) Enforcement. If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a certification or permit issued pursuant to this chapter, the director may do any one or more of the following:

- (1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;
- (2) Issue an order assessing an administrative penalty for any past or current violation;
- (3) Require compliance immediately or within a specified time; and

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- (4) Commence a civil action in circuit court in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

(c) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued under this chapter, and shall state with reasonable specificity the nature of the violation.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91, HRS.

(f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

[Eff] (Auth: HRS §342G-72) (Imp: HRS §342G-72)

- (g) Reserved. (Field Citations)

SUBCHAPTER 2

DEPOSIT BEVERAGE DISTRIBUTORS

§11-282-21 Deposit beverage container requirements. (a) Every deposit beverage container sold or offered for sale in the State shall have the Hawaii refund value clearly indicated in accordance with section 342G-112, HRS. Additionally all deposit beverage containers shall have:

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- (1) The refund value affixed on the top or side of the container in letters at least 1/8 inch in size; and
- (2) The refund value clearly, prominently, and indelibly marked on it by painting, printing, scratch embossing, raised letter embossing, or by securely affixed stickers.
[Eff _____] (Auth: HRS §342G-112)
(Imp: HRS §342G-112)

§11-282-22 Reporting. Deposit beverage distributors submit in inventory reports to the department using report forms prescribed by the department. The reports shall include, but not be limited to, information stated in section 342G-103, HRS. [Eff _____] (Auth: HRS §342G-105)
(Imp: HRS §342G-105)

SUBCHAPTER 3

DEALERS

§11-282-31 Exemptions. Dealers are exempt from having to operate as a redemption center for empty deposit beverage containers if they:

- (1) Are located in a high-density population area and within two miles of a certified redemption center that is operated independently from a dealer;
- (2) Are located in a rural area; or
- (3) Can demonstrate physical hardship including, but not limited to, the following:
 - (A) Would pose a threat to public safety; or
 - (B) Square footage needed to accommodate a redemption center would exceed one percent (1%) of the dealer's retail space; or
- (4) Can demonstrate financial hardship including, but not limited to, the following:
 - (A) Provide tax documentation to show that the cost to operate a redemption center will jeopardize the dealer's ability to conduct business; or
 - (B) Would threaten the dealer's ability to lease or occupy its place of business.

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[Eff] (Auth: HRS §342G-113) (Imp: HRS §342G-113)

SUBCHAPTER 4

REDEMPTION CENTERS

§11-282-41 Uncertified redemption activities. (a) Uncertified redemption activities shall not be eligible to collect the refund value or handling fee from the department. [Eff] (Auth: HRS §§342G-113) (Imp: HRS §342G-113)

§11-282-42 Requirements for certified redemption centers. (a) Redemption centers shall be certified by the department.

(b) Redemption centers shall have solid waste permits under chapter 342H, HRS.

(c) Certification shall be effective for a period of five years following date of approval by the department.

(d) Applicants shall re-certify the redemption center before expiration of the current certification or the center shall not be eligible for the container refund value or handling fee. [Eff] (Auth: HRS §§342G-114) (Imp: HRS §342G-114)

§11-282-43 Request for certification. (a) Requests for certification shall be prepared on application forms provided by the department and shall include, but not limited to, the following information:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative.
- (2) Annual tax clearance issued by the Hawaii State Department of Taxation and the Internal Revenue Service.
- (3) A *CERTIFICATE OF GOOD STANDING* issued by the Department of Commerce and Consumer Affairs Business Registration Division, unless the applicant is a sole proprietor.

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- (4) Description of redemption centers including site plans and scope of services.
- (5) A scope of services on how operations will be monitored to ensure compliance to the law.
- (6) Redemption centers that issue vouchers for redemption values must submit an implementation plan to the department for approval.
- (7) Other information the director determines to be appropriate.
- (b) Applications for certification shall be submitted to the department for each redemption center site.
- (c) Within thirty days of receiving a complete application, the director shall notify the owner or the duly authorized representative in writing on the status of the certification including:
 - (1) Approval; or
 - (2) Denial and the reasons for the denial.
 - (d) Basis for denial of certification:
 - (1) Applicants have outstanding balances owed to the State;
 - (2) Applicants have outstanding fines, penalties, violations or audit findings within any office of the department;
 - (3) Applicant history discloses revocation of a recycling center permit or certification within the last two years;
 - (4) Applicant certification history demonstrates a pattern of operation in conflict with the requirements of chapter 342G, HRS; or
 - (5) Principal officers of applying company have a criminal conviction of a crime of deceit.
 - (e) The department shall evaluate the applicant's response to the department's request for more information and shall notify the applicant in writing of the department's final approval or intent to deny the application. No application for a permit shall be denied unless the applicant has had an opportunity for a hearing by the department in accordance with chapter 91, HRS.
 - (f) The department may, on the department's own motion or the application of any person, suspend or revoke a certification if, after affording the applicant a hearing in accordance with chapter 91, HRS, the department determines that any condition of the certification has been violated or any provision of chapter 342G, HRS, has been violated or that such is in

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the public interest.

(g) The certificate is neither transferable nor assignable to any other person, company, or redemption center.

(h) Applicants shall submit new applications to the department if:

- (1) The location of a redemption center changes;
- (2) The operator of a redemption center changes;
- or
- (3) Changes occur in operations of a redemption center.

(i) New applications shall be approved by the department before the redemption center changes its operations or the applicant shall not be eligible for refund value or handling fees.

(j) Applicants shall notify the department thirty days prior to voluntary termination of certified redemption center activities.

(k) The certificate shall be kept on file at the redemption center site.

(l) The certificate is property of the department and shall be returned to the department upon decertification, revocation, invalidation, expiration of certification, or voluntary termination.

(m) The certificate issued to the applicant of a reverse vending machine shall be kept on file at the main business office of the applicant.

[Eff] (Auth: HRS §§342G-113, 342G-114, 342G-121) (Imp: HRS §§342G-113, 342G-114, 342G-121)

§11-282-44 Posting of certification. (a) A certification sign will be provided to redemption centers by the department and shall be prominently displayed where customers approaching the center can viewed it.

—(b) A certification sign shall not be displayed at a redemption center that is not certified by the department.

(c) The certification sign is property of the department and shall be returned to the department upon decertification, revocation, invalidation, expiration of certification, or voluntary termination.

(d) The certification sign of a reverse vending machine may be kept on file at the redemption center site or on file at the main business office of the applicant. [Eff] (Auth: HRS

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§§342G-114) (Imp: HRS §342G-114)

§11-282-45 Load inspection requirements. (a) Redemption center staff shall visually inspect each load of containers for which value is claimed to determine whether each load is eligible for any refund value. Visual inspection shall consist of the following:

- (1) Redemption center staff shall remove containers from any bag, box, or receptacle used to deliver the material to the center. In no case shall a certified redemption center pay or claim the refund value for any material not inspected by the redemption center.
- (2) A load of materials shall be deemed ineligible for any refund value if it meets criteria stated in chapter 342G-116, HRS.
[Eff] (Auth: HRS §§342G-114)
(Imp: HRS §342G-114)

§11-282-46 Redemption by weight. Redemption centers are allowed to redeem deposit beverage containers and pay refund value based on the weight of these containers presented for redemption, as follows:

- (1) For redemption of empty beverage containers by weight the weight shall be measured, recorded and reported in tons, pounds, and fractions thereof. All weighing in this State shall be done on a scale or other device approved, tested and sealed in accordance with department of agriculture weights and measurements and applicable regulations.
- (2) To be redeemed by weight, containers must be segregated by material.
- (3) Refund values for each container material shall be posted and paid according to the container per pound rates issued by the department in section 11-282-61.
- (4) Redemption centers must inspect loads as required under section 11-282-45.
- (5) Consumers may request that redemption value be computed by container, rather than by weight, for loads under fifty containers.

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[Eff] (Auth: HRS §342G-117)
(Imp: HRS §342G-117)

§11-282-47 Obtain payment. The department shall pay certified redemption centers handling fees and refund values based on reports submitted by the redemption centers to the department as described in section 11-282-48. [Eff] (Auth: HRS §342G-117) (Imp: HRS §342G-117)

§11-282-48 Reporting. Redemption centers shall turn in reports to the department using report forms prescribed by the department. Report information shall include, but not be limited to, information stated in chapter 342G, part VIII, HRS. [Eff] (Auth: HRS §342G-119) (Imp: HRS §342G-119)

SUBCHAPTER 5

RECYCLING FACILITIES

§11-282-51 Load inspection requirements. Recycling facilities may reject loads of deposit beverage containers from redemption centers if the loads meet criteria stated in chapter 342G-116, HRS. [Eff] (Auth: HRS §§342G-114, 342G-116) (Imp: HRS §§342G-114, 342G-116)

§11-282-52 Reporting. (a) Recycling facilities receiving deposit beverage container material from redemption centers shall maintain records involving empty beverage containers.

(b) Recycling facilities shall provide documentation as to the fate of deposit beverage container material collected from redemption centers.

(c) Documentation shall include information on the end user and shall verify weight and commodity. [Eff] (Auth: HRS §§342G-119, 342G-120) (Imp: HRS §§342G-119, 342G-120)

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SUBCHAPTER 6 - DEPARTMENT OF HEALTH REQUIREMENTS

§11-282-61 Segregated rate. (a) The method used to determine the segregated rate is to calculate the average number of empty deposit beverage containers per pound by material type. This shall include sampling procedures that consider, at a minimum, the following factors:

- (1) Weight by separately aggregated size categories of containers (same size) in their original manufactured and unfilled state.
- (2) Weight by variously mixed aggregated size of containers (different sizes) in their original manufactured and unfilled state.
- (3) Weight by separately aggregated size categories of containers (same size) in their post-filled state.
- (4) Weight by variously mixed aggregated size of containers (different sizes) in their post-filled state.
- (5) Weight by individually mixed aggregated size of container loads in their post-filled state as presented by consumers at recycling centers (selected statewide on a random basis).
- (6) Volume of sales at wholesale and retail levels in various regions of the State.
- (7) The segregated rates for each material type should incorporate a factor for typical contamination levels so refund value and handling fees paid by weight are based on container weights only and not contaminants.

(b) The department shall re-evaluate the segregated rate as needed.

(c) The department shall publish a segregated rate for each deposit beverage container material type. These rates must be used by redemption centers redeeming containers by weight under section 11-282-46.

(d) The rate must be published prior to the date when deposit beverage containers may first be redeemed and must be made available to all certified redemption centers and recycling facilities. [Eff

] (Auth: HRS §342G-117) (Imp: HRS §342G-117)

§11-282-62 Redemption centers established by the department. (a) If there is no redemption center

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within two miles of a dealer due to the criteria described in section 11-282-31, then the respective county and the State shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, then the State, with assistance from the county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.

(b) The department shall be able to negotiate, and pay, higher handling fees for redemption centers established pursuant to this section." [Eff

] (Auth: HRS §342G-113) (Imp: HRS §342G-113)